

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**HEATHER SPURLOCK,
& SOPHIA CARRASCO,**

Plaintiff,

v.

CV 09-786 WPJ/DJS

**ANTHONY TOWNES &
BARBARA WAGNER
in their individual capacities, &
CORRECTIONS CORPORATION
OF AMERICA,**

Defendants.

MOTION FOR LEAVE TO AMEND COMPLAINT AND ADD PARTY PLAINTIFF

Plaintiffs, by and through their attorneys of record, Kennedy & Han, P.C., hereby submit their Motion for Leave to Amend Complaint and Add Party Plaintiff, pursuant to Fed.R.Civ.P. 15(a). As grounds for their Motion, Plaintiffs state as follows:

INTRODUCTION

On August 12, 2009, Plaintiffs Heather Spurlock and Sophia Carrasco filed a Complaint in the above captioned matter, alleging that all named Defendants violated Plaintiffs' constitutional rights under the Eighth and Thirteenth Amendments to the United States Constitution, based on Defendant Townes's sexual assaults against them while they were incarcerated in the Camino Nuevo corrections facility in Albuquerque, New Mexico. [Dock. No. 1]. Additionally, Plaintiffs alleged claims against Defendants Corrections Corporation of America and Townes based on their commission of intentional torts upon Plaintiffs. Plaintiffs further alleged claims against Defendants Wagner and Corrections Corporation of America

based on negligent training, supervision, retention and management.

On August 25, 2009, Defendant Corrections Corporation of America filed its Answer [Dock. No. 6]. On September 25, Counsel filed their appearance on behalf of Defendant Anthony Townes, [Dock. No. 12], who, representing himself *in propria persona*, had previously answered Plaintiffs' complaint via a letter sent to Plaintiffs' counsel. [Exhibit 1]. On October 5, 2009, Defendant Wagner filed her Answer [Dock. No. 13].

Plaintiffs' counsel has been retained by a third former inmate at Camino Nuevo, Nina Carrera, whose allegations mirror those of the currently named Plaintiffs, and whose allegations further involve the Defendants currently named in this case. Plaintiff has consulted with all Defendants regarding the current Motion, and all Defendants have given their written consent to this Motion. In giving their consent to Plaintiffs' Motion, however, Defendants Wagner and Corrections Corporation of America do not waive any defenses that they may have to Plaintiffs' claims, including statute of limitations.

ARGUMENT AND AUTHORITIES

The Federal Rules of Civil Procedure state that "a party may amend the party's pleading only by leave of the court or by written consent of an adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). "In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies for amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc., the leave sought, should, as the rules require, be freely given." *Forman v. Davis*, 371 U.S. 178, 182 (1962). "The purpose of [rule 15] is to provide litigants the maximum opportunity for each claim to be decided on the merits rather than on procedural niceties." *Minter v. Prime Equipment Co.*, 45 F.3d 1196,

1204 (10th Cir. 2006). Fed.R.Civ.P. 15(a)(2). In the 10th Circuit, courts are encouraged to freely grant such motions, unless doing so would result in unfair prejudice to a non-moving party. See, *Rowe v. Albertson's Inc.*, 116 Fed. Appx. 171, 176 (10th Cir. 2004); *Thompson v. Colorado* 60 Fed. Appx. 212, 215 (10th Cir. 2003).

The addition of Ms. Carrera as a named Plaintiff will not create any unfair prejudice to any of the current defendants. All have been served and are represented by counsel. There has been no discovery in this matter; there have been no initial disclosures; and no scheduling conference is currently scheduled. The addition of Ms. Carrerra will conserve judicial resources by allowing the claims to be litigated together rather than requiring multiple lawsuits and repeated motions, conferences, and trials. Furthermore, all Defendants have given their written consent to this Motion.

CONCLUSION

For the foregoing reasons, Plaintiffs hereby request that this Court exercise its discretion and grant Plaintiffs' Motion for Leave to Amend Complaint and Add Party Plaintiff and for any and all such other relief that this Court deems just and proper. Plaintiff has attached the proposed Amended Complaint as Exhibit 2 to this Motion.

Respectfully submitted,

KENNEDY & HAN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Leave to Amend Complaint and Add Party Plaintiff was electronically mailed via the New Mexico District Court's electronic filing system on this 28th day of October, 2009, to the following counsel:

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